

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kevin Nicholas	Team: Team # 8	CCRB Case #: 200813926	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/24/2008 3:25 PM	Location of Incident: East 172nd Street between Morrison Avenue and Stratford Avenue	Precinct: 43	18 Mo. SOL 3/24/2010	EO SOL 3/24/2010	
Date/Time CV Reported Wed, 09/24/2008 3:34 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/24/2008 3:34 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Luis Ortiz	01133	934038	043 PCT
2. LT Fernando Guimaraes	00000	915848	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Jose Romero	00364	902316	O C I D
2. POM Juan Rodriguez	24850	924410	048 PCT
3. POM Ronald Deguisto	26151	900821	048 PCT
4. POM Nathaniel Anthony	03172	923516	043 PCT
5. POM Eric Hernandez	15957	926943	043 PCT
6. POM Cormac Joyce	31274	930444	043 PCT
7. POM Felix Delcarpio	11999	933735	043 PCT
8. SGT James Kelly	03479	921458	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes authorized stopping the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Luis Ortiz	Abuse: PO Luis Ortiz frisked § 87(2)(b)	
C.POM Luis Ortiz	Abuse: PO Luis Ortiz searched § 87(2)(b)	
D.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM Luis Ortiz	Abuse: PO Luis Ortiz refused to provide his name and shield number to § 87(2)(b)	
F.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes refused to provide his name and badge number to § 87(2)(b)	
G.POM Luis Ortiz	Force: PO Luis Ortiz used physical force against § 87(2)(b)	
H.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes threatened to arrest § 87(2)(b)	

## Synopsis

§ 87(2)(b) phoned in this complaint to the CCRB on September 24, 2008. He also filed a complaint online with the CCRB on September 29, 2008 (case number 200814134), which was later closed as a duplicate. On September 24, 2008 at approximately 3:25 PM, § 87(2)(b) and § 87(2)(b) left § 87(2)(b)'s residence at § 87(2)(b) in the Bronx and got in § 87(2)(b)'s car. They began driving towards a clinic so that § 87(2)(b) could pick up some medication. Near the intersection of East 172<sup>nd</sup> Street and Morrison Avenue, they were pulled over by an unmarked vehicle with flashing lights (**Allegation A**). Three plainclothes officers, who were identified as PO Luis Ortiz, Lt. Fernando Guimaraes and PO Felix Delcarpio exited and approached § 87(2)(b)'s car. PO Ortiz and Lt. Guimaraes approached the driver side and PO Delcarpio approached the passenger side. PO Ortiz told § 87(2)(b) that his brake light was not working and told him to step out. § 87(2)(b) complied. PO Ortiz then frisked and searched § 87(2)(b) by the back of the vehicle (**Allegations B and C**). During this time, Lt. Guimaraes went inside the car and searched the driver side (**Allegation D**). At some point, § 87(2)(b) saw that § 87(2)(b) had also stepped out and had given his identification to PO Delcarpio. § 87(2)(b) requested names and badge numbers from both PO Ortiz and Lt. Guimaraes. Both officers refused to provide this information (**Allegations E and F**). The officers ordered § 87(2)(b) to get back in his vehicle and PO Ortiz pushed § 87(2)(b) in his back (**Allegation G**). Lt. Guimaraes then dangled a pair of handcuffs and told § 87(2)(b) that if he did not get back to his vehicle and stop requesting the officers' information, then he would be arrested (**Allegation H**).

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) is a 5'8", 155-pound, § 87(2)(b) Asian male with black hair. He is unemployed. He refused to have his photo taken. He provided an initial complaint narrative on September 24, 2008 (encl. 3 A-C), filed a duplicate complaint online on September 29, 2008 (encl. 4 A-D), provided a phone statement on October 1, 2008 (encl. 5 A), and was interviewed at the CCRB on October 15, 2008 (encl. 6 A-F). His statements are synthesized below with inconsistencies noted.

On September 24, 2008, § 87(2)(b) and his friend, § 87(2)(b) picked up § 87(2)(b)'s mother from the hospital in § 87(2)(b)'s car, a black, two-door, 2001 Honda Civic (license plate: § 87(2)(b)). Afterwards, they dropped her off at § 87(2)(b)'s home, located near the intersection of § 87(2)(b).

At approximately 3:25 PM, § 87(2)(b) and § 87(2)(b) began driving to a clinic where § 87(2)(b) had to pick up medication. § 87(2)(b) was driving and § 87(2)(b) was in the front passenger seat. § 87(2)(b) was wearing a black shirt, blue jeans and a black baseball cap. He could not remember what § 87(2)(b) was wearing.

When they got about five blocks away, § 87(2)(b) made a right onto East 172<sup>nd</sup> Street between Stratford Avenue and Morrison Avenue. Around this time, § 87(2)(b) noticed a black, unmarked, four-door sedan behind his vehicle with flashing lights. In response, § 87(2)(b) pulled over (**Allegation A**). Three plainclothes officers exited the unmarked vehicle. A Hispanic male officer (short – 5'2", stocky – 200 lbs.), who was subsequently identified as PO Luis Ortiz of the 43<sup>rd</sup> Precinct, approached the driver side. A taller and slimmer Hispanic or white male officer (5'6", 160 lbs.), who was subsequently identified as Lt. Fernando Guimaraes of the 43<sup>rd</sup> Precinct, also approached the driver side. A male officer of unknown race (medium height and weight), who was subsequently identified as PO Felix Delcarpio of the 43<sup>rd</sup> Precinct, approached the passenger side. None of the officers had their badges displayed.

§ 87(2)(b) asked what was wrong. PO Ortiz told him that his brake light was not working and told him to step out. § 87(2)(b) complied and stood by his driver side door. PO Ortiz requested § 87(2)(b)'s identification and § 87(2)(b) provided his driver's license. PO Ortiz told § 87(2)(b) to go to the back of the vehicle, by the

left brake light. In his online complaint only, § 87(2)(b) alleged that PO Ortiz pushed him to the back of the vehicle. While § 87(2)(b) was facing him, PO Ortiz searched inside and around § 87(2)(b)'s pockets (**Allegations B and C**) and asked if he had any drugs. PO Ortiz then turned § 87(2)(b) around and searched his back pocket (**Allegation C**). PO Ortiz removed everything inside § 87(2)(b)'s pockets, including paper and money (**Allegation C**). § 87(2)(b) denied having any drugs and told PO Ortiz that he did not even smoke cigarettes. § 87(2)(b) explained that his friend lived in the area. Lt. Guimaraes stuck his head inside the driver side of the car and began searching it (**Allegation D**) (Lt. Guimaraes was the only officer at the scene who searched the vehicle). § 87(2)(b) could not specify where exactly Lt. Guimaraes searched because he was interacting with PO Ortiz.

Around this time, § 87(2)(b) noticed that, on the other side of the vehicle, § 87(2)(b) was already outside and PO Delcarpio was checking his identification. § 87(2)(b) did not see what had precipitated § 87(2)(b)'s exiting of the vehicle. § 87(2)(b) did not know the extent of PO Delcarpio's conversation with § 87(2)(b) and never actually heard PO Delcarpio request his identification. § 87(2)(b) did not see if PO Delcarpio wrote anything down. Lt. Guimaraes requested § 87(2)(b)'s identification again and then wrote down some information on a little notebook.

§ 87(2)(b) asked that PO Ortiz and Lt. Guimaraes show their badge numbers and explained that he wanted to write them down. PO Ortiz and Lt. Guimaraes both said no and said that they could not give this information (**Allegations E and F**). At one point, an unspecified officer asked § 87(2)(b) what he did for a living. In his phone statement, § 87(2)(b) specified that it was Lt. Guimaraes who asked him this. § 87(2)(b) said that he did not want to provide this information and that it was not relevant. § 87(2)(b) asked both PO Ortiz and Lt. Guimaraes for their names and badge numbers. Both PO Ortiz and Lt. Guimaraes refused to provide this information (**Allegation E and F**). § 87(2)(b) told them that he had a legal right to this information. § 87(2)(b) never interacted with PO Delcarpio and never requested this information from him. In his phone statement, however, § 87(2)(b) said that he asked all three officers for their names and badge numbers.

Both PO Ortiz and Lt. Guimaraes told § 87(2)(b) to go back to his vehicle. PO Ortiz pushed § 87(2)(b) in his back with both hands (**Allegation G**), pushing him in the general direction of his car. § 87(2)(b) remained standing and did not sustain any injuries. In his online complaint and phone statement, on the other hand, § 87(2)(b) said that both PO Ortiz and Lt. Guimaraes pushed him and that they pushed him to the driver's seat. § 87(2)(b) felt that Lt. Guimaraes was ruder than PO Ortiz. Lt. Guimaraes told § 87(2)(b) to go back or he would be arrested (**Allegation H**) and also told § 87(2)(b) that he would be arrested if he kept asking for the officers' names and badge numbers (**Allegation H**). At one point, Lt. Guimaraes dangled a pair of handcuffing and told § 87(2)(b) "Get back in your car, get back in your car, otherwise we will arrest you" (**Allegation H**). In his call to intake, his online complaint and his phone statement, § 87(2)(b) said that it was actually both PO Ortiz and Lt. Guimaraes who threatened him with arrest. § 87(2)(b) never actually obtained the officers' names or badge numbers. Later in his interview, § 87(2)(b) said that the threat of arrest and the push basically happened at the same time, and that the threat of arrest may have happened prior to the push.

The officers left the scene without saying anything. They got inside their vehicle which was parked in front of § 87(2)(b)'s vehicle. § 87(2)(b) subsequently wrote down the vehicle's license plate number. In his phone call to intake and in his interview, § 87(2)(b) provided this license plate number as "§ 87(2)(e), § 87(2)(b)". In his online complaint, § 87(2)(b) provided the plate number as "§ 87(2)(e), § 87(2)(b)". The car model was something like "IMPRIA". No one was arrested and no summonses were issued. § 87(2)(b) subsequently called 911 and reported the incident.

§ 87(2)(b) denied that his voice was raised at any point. He denied doing anything physically which the officers might perceive as a threat. After the incident, § 87(2)(b) and § 87(2)(b) checked the brake light and found it was still working. § 87(2)(b) believed that PO Ortiz had lied about the brake light not working. § 87(2)(b) later told § 87(2)(b) that PO Delcarpio had ordered him to step out of the vehicle.

### Results of Investigation

**Victim Statements – § 87(2)(b)**

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felt that PO Ortiz and Lt. Guimaraes acted inappropriately when dealing with § 87(2)(b) §

Contact letters were mailed to § 87(2)(b)'s residence on October 16, 2008 and November 17, 2008. As

### Officer Statements – Lt. Fernando Guimaraes

Lt. Fernando Guimaraes is a 5'8", 175-pound, § 87(2)(b)-old Hispanic male with black hair. On September

Lt. Guimaraes did not have any entries on the lined portion of his memo book (encl. 14 A-B) regarding the

driver out, pants hanging, underwear exposed, very agitated/combative/nervous. On Elder (Elder Avenue) heavy drug location. UF250 on driver. CPW/CPM (criminal possession of a weapon / criminal possession of marijuana).”

Lt. Guimaraes was interviewed at the CCRB on June 3, 2009 (encl. 15 A-C).

Prior to the incident, Lt. Guimaraes, PO Delcarpio and PO Ortiz had been conducting patrol in sector E. This area, particularly around Elder Avenue, has had a number of shootings and is known as a drug-prone location. The officers were not looking at any particular building in the area. Lt. Guimaraes explained, however, that all of Elder Avenue consists of ‘clean halls’ locations.

At the incident date and time, Lt. Guimaraes, PO Delcarpio and PO Ortiz were driving northbound on Elder Avenue (going uphill), having just passed Westchester Avenue, when they noticed § 87(2)(b) enter a vehicle being driven by § 87(2)(b). § 87(2)(b)'s vehicle had been stopped in the middle of the block on Elder Avenue, between Westchester Avenue and 172<sup>nd</sup> Street. This was the first time that the officers saw them. Lt. Guimaraes had not seen where § 87(2)(b) had come from. § 87(2)(b) began driving and the officers followed to 172<sup>nd</sup> Street, where § 87(2)(b) made a right turn. § 87(2)(b) failed to make a complete stop at a stop sign and failed to signal. The officers therefore activated their emergency lights and honked the siren. § 87(2)(b) stopped in the middle of the block.

The officers approached § 87(2)(b)'s vehicle with their badges displayed. PO Ortiz approached the driver side of the vehicle and PO Delcarpio approached the passenger side of the vehicle. Lt. Guimaraes also approached the passenger side but stood by the back of § 87(2)(b)'s vehicle. Lt. Guimaraes could somewhat hear the conversations between the occupants and the officers. He overheard PO Ortiz explaining to § 87(2)(b) that he was being stopped but could not hear what § 87(2)(b) said in response. It was apparent, however, that PO Ortiz was “having a hard time with the driver.” § 87(2)(b) was immediately argumentative, nervous and combative. Shortly thereafter, PO Ortiz told him, “Step out of the car.” When Lt. Guimaraes was asked in his interview why § 87(2)(b) was asked to step out of the vehicle, he explained that “when the officers feels that [the occupant] might be concealing something, if he’s moving around too much inside the vehicle – we don’t know what’s in the car – so to make him step out of the car, then we know that he doesn’t have anything underneath the seats, so on and so forth.” When Lt. Guimaraes was asked, however, whether he actually saw what § 87(2)(b) had done which precipitated him being ordered out of the car, Lt. Guimaraes replied, “Not that I recall. No.” When Lt. Guimaraes was asked whether he had seen § 87(2)(b) moving around, he said no.

During this time, PO Delcarpio was speaking to § 87(2)(b). At some point, both PO Delcarpio and Lt. Guimaraes were speaking to him. § 87(2)(b) “was fine, he was no problem.” At some point, § 87(2)(b) stepped out. Lt. Guimaraes believed that § 87(2)(b) did this on his own; he was not ordered to step out. PO Delcarpio requested § 87(2)(b)'s identification. § 87(2)(b) complied. The identification demonstrated that that he lived on Elder Avenue and had just exited his residence. Lt. Guimaraes was not aware whether any warrants check was done for § 87(2)(b).

After § 87(2)(b) stepped out, he was brought to the back of his vehicle, where Lt. Guimaraes was already standing. PO Delcarpio was still standing off to the side with § 87(2)(b) at this point. PO Ortiz frisked § 87(2)(b). Lt. Guimaraes saw PO Ortiz pat down § 87(2)(b)'s waist area. § 87(2)(b) continued being argumentative. During the frisk, it became apparent that § 87(2)(b) was wearing either his shorts or pants in such a way that his underwear was exposed. As a result, “the officers had to lift up his pants.” Lt. Guimaraes never saw PO Ortiz search § 87(2)(b).

When Lt. Guimaraes was asked whether any officer went inside § 87(2)(b)'s car, he replied, “No. That I don’t recall.” Lt. Guimaraes said that he could not recall whether any officer at the scene ever searched § 87(2)(b)'s car. When further questioned about this later on in his interview, Lt. Guimaraes specified that he did not actually see any car search conducted.

When Lt. Guimaraes was asked in his interview whether he had any direct interaction with § 87(2)(b) he replied, “Not that I recall. No.” Lt. Guimaraes denied saying anything to § 87(2)(b). Lt. Guimaraes could not

recall whether PO Delcarpio spoke to § 87(2)(b). Lt. Guimaraes was not certain, but believed that PO Delcarpio likely did not approach § 87(2)(b) and probably remained off to the side throughout the interaction. Since Lt. Guimaraes has the rank of lieutenant, he does not have a badge number. Nevertheless, § 87(2)(b) never requested his badge number. Lt. Guimaraes could not recall § 87(2)(b) requesting either of the other officers' badge numbers.

Lt. Guimaraes could not recall any officer pushing § 87(2)(b) in his back. Lt. Guimaraes denied that any officer had any physical interaction with § 87(2)(b) besides the frisk conducted by PO Ortiz. When Lt. Guimaraes was asked whether there was ever any issue with § 87(2)(b) getting back inside his car, he replied that once the officers leave the scene "you're free to do whatever you want to do." Lt. Guimaraes could not remember any officer telling § 87(2)(b) that he would be arrested if he did not get back inside his car.

Lt. Guimaraes directed his officers to do a UF-250. Ultimately the officers decided not to issue § 87(2)(b) any summons at their discretion.

Lt. Guimaraes said that at the time of his interview, he could no longer remember the details regarding the defective taillight referenced in his memo book; he could not remember which side it was on. In regards to the CPM (criminal possession of marijuana) suspicion that he listed in his memo book, Lt. Guimaraes explained that this suspicion was due to § 87(2)(b)'s agitated and combative demeanor (which gave the impression that § 87(2)(b) "wasn't all there") and because this all happened in a drug-prone area.

Lt. Guimaraes could not recall § 87(2)(b) ever calling 911. No other police units arrived at the scene. During his interview, when Lt. Guimaraes was given the general details of § 87(2)(b)'s call to 911 and the radio communications, he said that it all sounded vaguely familiar to him. When Lt. Guimaraes was asked how he would identify himself over the air to Central, he replied, "43 Special Ops."

The roll call was reviewed with Lt. Guimaraes. He confirmed that his name is the one handwritten next to "SOL" on the first page. Lt. Guimaraes explained that Lt. Timoney, whose name was handwritten directly underneath his name, would have been the administrative lieutenant – he was definitely not another special operations lieutenant.

Lt. Guimaraes was asked whether the precinct has a car with license plate § 87(2)(e), § 87(2)(b). He said that he did not know – he would need the RMP number. Lt. Guimaraes confirmed that the precinct had two unmarked Impalas and said that it was possible that the anti-crime team would be using one of them. Lt. Guimaraes said that the team could have plausibly been using either RMP numbers § 87(2)(e), § 87(2)(b).

#### **Officer Statements – PO Luis Ortiz**

PO Luis Ortiz is a 5'5", 182-pound, § 87(2)(b)-old Hispanic male with black hair. On September 24, 2008, he had a 10:00 AM to 6:35 PM tour and was assigned to the anti-crime team. He was in plainclothes and working with PO Delcarpio. They were traveling in an unmarked car, RMP #: § 87(2)(b). He did not believe that there were any officers in his car that day, but he was not sure. His memo book entries (encl. 8 A-B) contain no mention of this incident.

PO Ortiz prepared a UF-250 for § 87(2)(b) (encl. 9 A-B, 10 A-B). According to the handwritten UF-250 (encl. 9 A-B), § 87(2)(b) was stopped on the suspicion of CPW (criminal possession of a weapon) and CPM (criminal possession of marijuana). The stop lasted approximately ten minutes. Under the 'circumstances which led to stop,' PO Ortiz checked only 'furtive movements.' The UF-250 indicates that § 87(2)(b) provided his identification verbally and "did not want to give address." The report indicates that the reason for the stop was explained and that no other persons were 'stopped/questioned/frisked.' Under 'physical force used,' PO Ortiz checked 'hands on suspect' and 'suspect against wall/car.' The report indicates that PO Ortiz identified himself by his shield. The report states that § 87(2)(b) was frisked due to 'furtive movements' and 'refusal to comply with officer's direction(s) leading to reasonable fear for safety.' The report indicates that § 87(2)(b) was not searched. § 87(2)(b)'s demeanor was described as "annoyed, agitated." Under 'additional circumstances/factors,' PO Ortiz checked 'area has high incidence of reported

offense of type under investigation,’ ‘time of day, day of week, season corresponding to reports of criminal activity,’ and ‘proximity to crime location.’

PO Ortiz was interviewed at the CCRB on May 8, 2009 (encl. 11 A-B).

PO Ortiz did not remember this incident. PO Ortiz was given the general descriptions of § 87(2)(b) and § 87(2)(b) and § 87(2)(b)'s clothing description. None of this sounded familiar to him. He was also shown the photo on § 87(2)(b)'s driver's license. He did not recognize him. PO Ortiz was given the general details of this incident and said that none of it sounded familiar. He could remember the officers stopping a car around this time or searching a car around that time. He could not recall anyone requesting any officers' names or badge numbers. He could not remember any officer pushing an individual around that time. He could not recall anyone being searched around that time.

PO Ortiz reviewed the handwritten UF-250 that he prepared and acknowledged that it was his handwriting. All of the details of the UF-250 were reviewed during his interview. However, PO Ortiz could not remember preparing that UF-250 and said that none of the details on it helped him to remember the incident.

#### **Officer Statements – PO Felix Delcarpio**

PO Felix Delcarpio is a 5'7", 205-pound, § 87(2)(b)-old Hispanic male with black hair. On September 24, 2008, PO Delcarpio had a 10:00 AM by 6:35 PM tour, was in plainclothes, and was assigned to the anti-crime team. He was working with PO Ortiz and Lt. Guimaraes. They were traveling in an unmarked car (around the time of the incident, they were regularly using RMP #§ 87(2)(b) beige or tan Ford four-door sedan). His memo book entries (encl. 12 A-B) contain no mention of this incident.

PO Delcarpio was interviewed at the CCRB on May 28, 2009 (encl. 13 A-C). § 87(2)(g)

Initially, PO Delcarpio could not remember this incident. He said that § 87(2)(b) looked only vaguely familiar. It was only when PO Delcarpio was given § 87(2)(b)'s description, and it was explained that § 87(2)(b) was driving the car, that he remembered the incident.

At the time of his CCRB interview, PO Delcarpio could not remember the incident location. PO Delcarpio believed that he was driving and that Lt. Guimaraes was in the passenger seat. Prior to the incident, the officers had been observing a drug-prone area. At the time of the incident, PO Delcarpio and Lt. Guimaraes saw § 87(2)(b) walk out of a building in the area (PO Delcarpio could not remember what building). Lt. Guimaraes suggested that it was a ‘clean halls’ building and the officers subsequently confirmed it was by glancing over and making certain that it had a ‘clean halls’ sign on the front. They did not actually see § 87(2)(b) enter the building. § 87(2)(b) got inside a black vehicle which drove away. PO Delcarpio, PO Ortiz and Lt. Guimaraes subsequently pulled over the vehicle.

When PO Delcarpio was asked in his interview why the officers decided to stop § 87(2)(b) in particular, as opposed to anyone else who may have exited the building, he responded that he did not understand the question. When he was asked what made the officers suspect § 87(2)(b) of being involved in any crime or violation, his representative responded, “They don’t have to suspect anything. Anybody coming out of a ‘clean halls’ building they can question to see whether they live there or not. You don’t need any suspicion of criminal activity.” When the investigator pointed out in this particular situation, the person in question could simply live in the building, the representative responded, “Of course. That’s why the landlord signs an affidavit with the Department allowing them to stop everyone that’s going in and out, just to confirm that they actually live there.”

PO Delcarpio and Lt. Guimaraes approached the passenger side and PO Ortiz approached the driver side. Lt. Guimaraes spoke to § 87(2)(b) and asked him if he lived in the building that he had just exited. § 87(2)(b) confirmed that he did. PO Delcarpio characterized § 87(2)(b)'s demeanor as courteous. § 87(2)(b) provided his identification. Because § 87(2)(b) was a tall person, he had to open his door,

put his legs out the car, and reach into his pocket in order to get his identification out of his wallet. § 87(2)(b) had opened his door voluntarily; he was never ordered to do so. § 87(2)(b) never stood up outside the car. Lt. Guimaraes looked at the identification that § 87(2)(b) provided and it was apparent to PO Delcarpio and Lt. Guimaraes that the information checked out. At this time, PO Ortiz took down the information for the vehicle's occupants.

PO Delcarpio could not characterize § 87(2)(b)'s demeanor. The only thing that PO Delcarpio heard, regarding PO Ortiz's interaction with § 87(2)(b) was PO Ortiz requesting § 87(2)(b)'s identification. PO Delcarpio could not remember whether § 87(2)(b) was told to exit the vehicle. However, he was certain that § 87(2)(b) never stepped out of the vehicle. § 87(2)(b) did produce identification and PO Ortiz used it to write down § 87(2)(b)'s information to prepare a UF-250 for § 87(2)(b). After the information was collected, § 87(2)(b) closed his door and the interaction ended. PO Delcarpio and Lt. Guimaraes never went to the driver side of the vehicle. The entire interaction lasted about two minutes.

PO Delcarpio did not believe that any officer frisked § 87(2)(b). PO Delcarpio never saw PO Ortiz search § 87(2)(b) or heard PO Ortiz ask him if he had drugs. No officer ever searched § 87(2)(b)'s vehicle and no officer went inside § 87(2)(b)'s vehicle. § 87(2)(b) never requested any officers' badge numbers. No officer ever pushed § 87(2)(b). No officer ever told § 87(2)(b) that he could be arrested. PO Delcarpio could not remember if there were any issues with the functionality of § 87(2)(b)'s brake light.

When PO Delcarpio was asked why PO Ortiz wrote up a UF-250 for § 87(2)(b) he said it is because "basically anybody that we stop or have interaction with, we write up a 250." PO Delcarpio did not believe that the officers ever wrote up a UF-250 for § 87(2)(b) – "I don't think the lieutenant wrote anything down."

#### **SPRINT Printout and Communications CD**

The SPRINT printout (encl. 16 A) indicates that at 3:27 PM, § 87(2)(b) called 911 and reported that three male Hispanics, traveling in a black car, were searching his car. § 87(2)(b) said that they claimed to be the police but did not show him any identification. He provided the make and color of his vehicle. According to the printout, a patrol sergeant (43ST2) called in a 10-93Q (other report prepared).

The CD contains more specific information. On the 911 call, § 87(2)(b) reported that the officers did not say why they stopped him, that they searched him, and that they did not show their badge numbers. He specifically stated that he asked for their names and badges and they did not provide this information. He also said that they "tried to arrest" him. § 87(2)(b) described the individuals as being either white or Hispanic. According to the radio messages, Central called over the incident location and said that the job involved three suspicious males, who claimed that they were PD, who had stopped and searched a car. A unit identifying itself as "43 Special Ops" (as mentioned above, this was Lt. Guimaraes) immediately radioed in and said that he would 10-03 Central (call dispatcher by telephone). Twenty-five seconds later, Lt. Guimaraes called and spoke to Central over the phone. He asked if Central had requested a plate check and Central said yes. He reported that the job at that location was a 93 Q (other report prepared). Lt. Guimaraes explained that it had been a car stop and that the driver "was not too happy being stopped."

#### **Warrant Check Search Results**

The warrant check search results (encl. 17 A-D) indicate that a NYSPIN check was done for an individual named § 87(2)(b) at 2:58 PM on the incident date. However, this § 87(2)(b) had a different year of birth (§ 87(2)(b)). No tax number was provided for the officer who conducted this search. Five minutes later, a local warrant check was done for a § 87(2)(b) (no year of birth specified) by a Det. Jose Romero of the Organized Crime Investigative Division. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) The warrant check search results were negative for § 87(2)(b)

#### **UF-250 Indexes**





In CCRB case 200701896, one allegation of ‘Abuse – Other’ (detainment) and one allegation of ‘Abuse – Stopped’ were substantiated against PO Ortiz. The PD deemed both allegations ‘Department Unable to Prosecute.’

PO Delcarpio has never had any allegations substantiated against him at the CCRB.

### **Conclusions and Recommendations**

#### **Officer Identification**

§ 87(2)(b) identified PO Ortiz by description as the officer who approached his driver side, frisked and searched him, refused to provide his name and badge number to him, and pushed him. Although PO Ortiz could not remember this incident, he prepared a UF-250 for § 87(2)(b) which indicated that he frisked him. Furthermore, Lt. Guimaraes and PO Delcarpio were consistent that PO Ortiz was the officer who approached the driver side and first spoke to § 87(2)(b) § 87(2)(g)

§ 87(2)(b) said that the second officer who approached his driver side was a Hispanic or white male officer who was taller than PO Ortiz. To note, both Lt. Guimaraes and PO Delcarpio are slightly taller than PO Ortiz. On the other hand, Lt. Guimaraes and PO Delcarpio were consistent that both of them were standing on the passenger side throughout the interaction. However, Lt. Guimaraes said that he stood by the back of the car while PO Delcarpio spoke to § 87(2)(b). Although Lt. Guimaraes could not recall speaking to § 87(2)(b) he also acknowledged that § 87(2)(b) was brought to the back of the vehicle where he was standing. § 87(2)(g)

#### **Undisputed Facts**

It is undisputed that officers stopped § 87(2)(b)'s vehicle.

#### **Disputed Issues**

§ 87(2)(g)

#### **Assessment of Evidence**

§ 87(2)(g) According to § 87(2)(b) he was told that he was stopped because his brake light was not working § 87(2)(b) said that he later tested the brake light and it worked fine). Since PO Ortiz did not remember the incident, the only testimony that he provided regarding the reason for the stop was what he wrote on the UF-250. According to that document, the main reason § 87(2)(b) was stopped was because he had been making ‘furtive movements.’ Additionally, PO Ortiz cited the area and time of day as reasons for stopping him. § 87(2)(g)

§ 87(2)(g) According to Lt. Guimaraes, the officers were traveling northbound on § 87(2)(b) when they saw § 87(2)(b) get in the car on § 87(2)(b) between Westchester Avenue and East 172<sup>nd</sup> Street and then drive up to East 172<sup>nd</sup> Street (also northbound) where he then went through a stop sign and failed to signal. As mentioned above, the problem with this scenario is that according to NYCityMap (encl. 26 A), traffic on § 87(2)(b) is one-way southbound. § 87(2)(g)

§ 87(2)(g) Lt. Guimaraes, like § 87(2)(b) also mentioned a defective taillight but could not remember any of the details regarding this. Both the UF-250 and Lt. Guimaraes cited suspicion of criminal possession of marijuana and criminal possession of a weapon.

§ 87(2)(g)

§ 87(2)(g) PO Delcarpio was the only person to claim that § 87(2)(b) never stepped out. However, § 87(2)(b) and Lt. Guimaraes were consistent that PO Ortiz had § 87(2)(b) step out of the vehicle. § 87(2)(g)

§ 87(2)(g) The UF-250 indicated that § 87(2)(b) made furtive movements. However, as mentioned above, PO Ortiz could not remember the incident, and Lt. Guimaraes did not know why PO Ortiz ordered him out and frisked him.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) said that at some point, he saw § 87(2)(b) standing outside the vehicle. Lt. Guimaraes corroborated this and said that PO Delcarpio ordered § 87(2)(b) to step out. However, PO Delcarpio said that § 87(2)(b) voluntarily opened his door and placed his legs outside in order to get his wallet from his own pocket.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) § 87(2)(b) said that he saw Lt. Guimaraes enter the driver side but could not specify where he searched. Although § 87(2)(b)'s statement was short and of limited value, he did not corroborate this allegation. PO Delcarpio denied that any officer entered the car or searched it. Lt. Guimaraes could not recall any officer going inside the car and denied that any officer searched it. However, when he was asked in his interview why § 87(2)(b) was told to step out of the vehicle, Lt. Guimaraes provided a hypothetical answer, explaining that this is typically done because the occupant is suspected of "concealing something" and is done to make certain "he doesn't have anything underneath seats, so on and so forth." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that at first, he asked the officers to display their badges so that he could write their information down. When they refused, he asked them for their names and badge numbers. § 87(2)(b) did not corroborate this. PO Delcarpio denied that § 87(2)(b) said this, but also stated that he did not hear much of the interaction between PO Ortiz and § 87(2)(b). Lt. Guimaraes denied that § 87(2)(b) requested any badge numbers. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) said that the officers ordered him back to his vehicle and then PO Ortiz pushed him towards it. However, § 87(2)(b) alleged that PO Ortiz pushed him in his back. § 87(2)(g)

While both Lt. Guimaraes and PO Delcarpio denied that any officer pushed § 87(2)(b) under the section marked ‘physical force’ on the UF-250, PO Ortiz checked the following: ‘hands on suspect’ and ‘suspect against wall/car.’ § 87(2)(g)

§ 87(2)(g)

**Allegation A.** Lt. Fernando Guimaraes authorized stopping the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

**Allegation B.** PO Luis Ortiz frisked § 87(2)(b)

§ 87(2)(g)

**Allegation C.** PO Luis Ortiz searched § 87(2)(b)

§ 87(2)(g)

**Allegation D.** Lt. Fernando Guimaraes searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

**Allegation E.** PO Luis Ortiz refused to provide his name and shield number to § 87(2)(b)

**Allegation F.** Lt. Fernando Guimaraes refused to provide his name and badge number to § 87(2)(b)

§ 87(2)(g)

**Allegation G.** PO Luis Ortiz used physical force against § 87(2)(b)

§ 87(2)(g)

**Allegation H. Lt. Fernando Guimaraes threatened to arrest** § 87(2)(b)

§ 87(2)(g)

Investigator: Date:

Supervisor: Date:

Reviewed by: Date:

Reviewed by: Date: